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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 10/730,847  | 12/09/2003  | Arnold H. Bramnick   | BOC9-2003-0037 (406)       | 5226             |
| 40987 7590 03/29/2007<br>AKERMAN SENTERFITT<br>P. O. BOX 3188<br>WEST PALM BEACH, FL 33402-3188 |             |                      | EXAMINER<br>VETTER, DANIEL |                  |
|   |             |                      | ART UNIT<br>3628           | PAPER NUMBER     |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 03/29/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/730,847

Applicant(s)

BRAMNICK ET AL.

Examiner

Daniel P. Vetter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,17 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,10-16 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/5/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

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### DETAILED ACTION

Claims 1-25 are pending in this application.

#### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, 10-16, and 18-24, drawn to a method and system for determining flight cancellations and machine readable storage having stored thereon a computer program having a plurality of code sections, classified in class 705, subclass 1.
  - II. Claims 8, 9, 17, and 25, drawn to a method and system for determining flight cancellations and machine readable storage having stored thereon a computer program having a plurality of code sections, classified in class 705, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as presenting financial data. See MPEP § 806.05(d).

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The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), and the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Richard Henson on March 19, 2007 a provisional election was made without traverse to prosecute invention I, claims 1-7, 10-16, and 18-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8, 9, 17, and 25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4, 13, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The term "substantially" in claims 4, 13, and 21 is a relative term which renders the claims indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Specifically, the limitation makes it unclear how close to real time the data must be provided.

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*Claim Rejections - 35 USC § 102*

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-7, 10-16, and 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu, et al., U.S. Pat. No. 6,314,361 (Reference A of the attached PTO-892).

11. As per claims 1, 10, and 18, Yu, et al. teaches a means for and obtaining flight financial data from at least one flight financial data store for at least two flight cancellation candidates (column 8, lines 8, lines 17-19, 29-31); a means for and processing said flight financial data for said flight cancellation candidates (column 8, lines 55-56; column 10, lines 6-14); and a means for and presenting the financial data for said flight cancellation candidates (column 8, lines 56-57; column9, lines 29-31).

12. As per claims 2, 11, and 19, Yu, et al. teaches the limitations of claims 1, 10, and 18 as described above. Yu, et al. further teaches a means for, and canceling at least one of said flight cancellation candidates based upon said presented financial data (column 11, line 54).

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13. As per claims 3, 12, and 20, Yu, et al. teaches the limitations of claims 1, 10, and 18 as described above. Yu, et al. further teaches said flight financial data comprises a value of at least one selected from the group consisting of cargo, United States Postal Service mail, passenger ticket, and fuel requirements data (column 9, lines 13-16). Additionally, any differences between the recited data and the data taught by Yu, et al. is solely found in the non-functional descriptive material. Non-functional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *In re Ngai*, 367 F.3d 1336, 1339; 70 USPQ2d 1862, 1864 (Fed. Cir. 2004); *cf. In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

14. As per claims 4, 13, and 21, Yu, et al. teaches the limitations of claims 1, 10, and 18 as described above. Yu, et al. further teaches said flight financial data is provided in substantially real time (Abstract).

15. As per claims 5, 14, and 22, Yu, et al. teaches the limitations of claims 1, 10, and 18 as described above. Yu, et al. further teaches means for and obtaining flight operations data (column 8, lines 17-19, 51-54), said flight operations data being utilized

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by said obtaining step to determine flight cancellation candidates (column 11, lines 25, 54).

16. As per claims 6, 15, and 23, Yu, et al. teaches the limitations of claims 5, 14, and 22 as described above. Yu, et al. further teaches said flight operations data comprises at least one selected from the group consisting of crew and plane availability data (column 9, lines 17-18).

17. As per claims 7, 16, and 24, Yu, et al. teaches the limitations of claims 1, 10, and 18 as described above. Yu, et al. further teaches said flight financial data store comprises at least one selected from the group consisting of cargo, crew, reservations, and flight operations information (column 8, lines 40-42).

### *Conclusion*

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Greenstein, U.S. Pat. No. 6,253,147 (Reference B of the attached PTO-892) teaches a system for conducting local neighborhood searches among three or more aircraft routes to cure any irregularity in one of the aircraft routes, in which states of Binary Operations are stored, time and space feasibility tables are created from the stored states; and Tertiary Operations responsive to data stored in the feasibility tables are performed on the three or more entities to effect a repair.

Kipersztok, et al., U.S. Pat. Pub. No. 2004/0111197 (Reference C of the attached PTO-



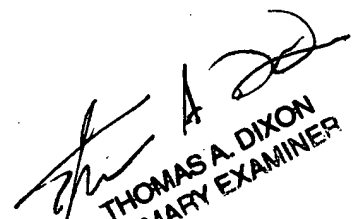
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892) teaches a diagnostic system and method for enabling multistage decision optimization in aircraft preflight dispatch.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Vetter whose telephone number is (571) 270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
THOMAS A. DIXON  
PRIMARY EXAMINER